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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

MELEADE MCQUEEN WASSON,

Defendant and Appellant.

E044404

(Super.Ct.No. SWF000490)

OPINION

APPEAL from the Superior Court of Riverside County. F. Paul Dickerson III,
Judge. Affirmed.

Donna L. Harris, under appointment by the Court of Appeal, for Defendant and
Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant
Attorney General, Gary W. Schons, Assistant Attorney General, James D. Dutton and
Sabrina Y. Lane-Erwin, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant and appellant Meleade McQueen Wasson appeals her jury conviction for two counts of inflicting corporal injury on a child (Pen. Code, § 273d, subd. (a))¹ and two counts of abusing or endangering the health of a child (§ 273a, subd. (a)). She argues her conviction should be reversed because the trial court violated her constitutional right to confront witnesses and to present a meaningful defense.

FACTUAL AND PROCEDURAL BACKGROUND

On April 24, 2002, defendant's oldest son, A., told a teacher at his middle school that he and his younger brother, S., had been beaten at home by their parents with belts, switches, paddles, and extension cords. The teacher took A. to a school counselor's office. Law enforcement and child protective services were called to the scene after A. lifted his shirt to reveal marks on his back and arms. A. sought reassurance he would not be sent home after reporting the abuse and also expressed concern about the safety of his younger brother, S. A. wanted S. to be brought to his school so they could stay together.

The responding officer spoke separately with both boys. He and a social worker then took photographs of the boys' faces for identification purposes and specific areas of their bodies where the boys indicated injuries or scarring were located. On both boys, marks were concentrated on the upper back, lower back, thighs, and buttocks, and included "loop marks." According to the medical expert who testified at trial, a "loop mark" is a "patterned injury that actually looks like a loop" and "it results from being hit

¹ All further statutory references are to the Penal Code unless otherwise stated.

with some object that is looped around,” such as an extension cord or rope. “[T]he looped part hits the skin with . . . fast acceleration [and] often makes a mark on the skin.” These types of injuries are “just different from what you get accidentally.” Some of the marks appeared to be “fresh injuries,” as opposed to “old scars,” and A. indicated he had been hit in the face and chest two days earlier.

After speaking with the boys, the officer asked defendant how these injuries occurred, and she said they were the result of the boys “rough-housing” together. When asked about physical discipline of the boys, she admitted using “[s]witches, paddles, [and] belts” prior to the family’s move from Mississippi in January. Based on this initial investigation, the boys were taken into protective custody and a felony complaint was filed charging both parents with abuse.

At trial, which occurred more than five years after the children were taken into protective custody, testimony by the younger brother, S., was consistent with the prior allegations of abuse; however, A. testified many of the allegations he previously made against his parents were false. He claimed he coached S. to tell the same stories about their parents. He also told his grandmother, a therapist, and the prosecutor that the allegations against his parents were false.

At trial, defendant represented herself. Her strategy at trial was to impeach the credibility of the People’s witnesses, including S., and to rely on A.’s recantation to argue the beatings had never occurred, or, if the children had been hit, it was nothing but reasonable discipline.

In turn, the prosecutor was able to present evidence discrediting A.'s recantation. The evidence showed A. did not recant the allegations for an extended period of time while he was removed from his family, living in foster homes, and being treated regularly by a licensed psychotherapist. During approximately two years of treatment, the psychotherapist testified A. did not recant the allegations and was consistent in what he told the therapist about the abuse. Then, sometime in 2003, A. got in trouble and was sent to juvenile hall. He was visited there by both his grandmother and defendant. While he was in juvenile hall, he told the therapist for the first time that the abuse allegations were untrue. When the therapist asked why he was changing his story, A. said, "[b]ecause my mother and my grandmother told me," and then he used his hands to make quotation marks and said, "If I tell the truth, they'll get me out of here." Sometime thereafter, A. went to live with his grandmother. He testified he had been living with his grandmother for about a year prior to trial. In addition, an investigator testified he served A. with a subpoena at the courthouse prior to trial, and at that time, A. was standing arm-in-arm with defendant and his grandmother.

The jury convicted defendant of two counts of inflicting corporal injury on a child (§ 273d, subd. (a), counts 5 & 7) and two counts of abusing or endangering the health of a child (§ 273a, subd. (a), counts 6 & 8).² The trial court denied probation and sentenced

² An information filed July 13, 2004, charged both parents with abuse in counts 1 through 4. However, prior to defendant's trial, a second amended information was filed that only listed the charges against defendant at counts 5 through 8. It appears this was done to segregate the charges against the father, so he could be tried separately.

defendant to a total of four years in state prison. To reach the sentence, the court imposed the middle term of four years on count 5, the principal term (§ 273d, subd. (a)), and imposed concurrent terms of four years as to the remaining counts.

DISCUSSION

Defendant claims the trial court erroneously sustained the prosecutor's hearsay and other objections when she attempted to elicit testimony from the People's witnesses that was relevant to their credibility. Because her defense "was predicated almost entirely on impeaching the credibility of the People's witnesses," she contends the trial court's erroneous rulings violated her constitutional right to confront witnesses and to present a complete defense. To support her argument, defendant cites a number of evidentiary rulings in the record. While conceding "[t]he individual errors in the evidentiary rulings by the court may seem inconsequential," she argues the cumulative effect of the court's erroneous rulings was prejudicial to her defense.

"Application of the ordinary rules of evidence . . . does not impermissibly infringe on a defendant's right to present a defense." (*People v. Mincey* (1992) 2 Cal.4th 408, 440.) In other words, if a trial court erroneously excludes or rejects defense evidence, the error is one of state law and not one "of constitutional dimension." (*People v. Fudge* (1994) 7 Cal.4th 1075, 1102-1103.) As a result, the judgment is reversible only if it is reasonably probable the defendant would have obtained a more favorable result absent the error. (*Id.* at pp. 1103-1104.)

"Trial judges retain 'wide latitude insofar as the Confrontation Clause is concerned to impose reasonable limits on . . . cross-examination [by the defense] based

on concerns about, among other things, harassment, prejudice, confusion of the issues, the witness' safety, or interrogation that is repetitive or only marginally relevant.' [Citations.] A trial court's ruling to admit or exclude evidence offered for impeachment is reviewed for abuse of discretion and will be upheld unless the trial court 'exercised its discretion in an arbitrary, capricious, or patently absurd manner that resulted in a manifest miscarriage of justice.' [Citation.]" (*People v. Ledesma* (2006) 39 Cal.4th 641, 705.)

For the most part, the challenged rulings occurred during defendant's cross-examination of her older son, A. Defendant claims A.'s responses to the challenged cross-examination questions would have impeached the credibility of her younger son, S., by showing S. made inconsistent statements as to whether the abuse actually occurred and by showing S. may have been unduly pressured not to recant the abuse allegations. The trial court sustained the prosecutor's objections because the questions were either compound or cumulative or because the questions called for hearsay. Defendant argues A.'s responses would have been admissible as inconsistent statements.³ We disagree.

³ In support of her argument, defendant cites only Evidence Code section 1202. However, we assume defendant means Evidence Code section 1235, because section 1202 is inapplicable under the circumstances of this case. Section 1202 deals with the impeachment of a hearsay declarant whose hearsay statement is admitted into evidence even though the declarant does not testify at the trial. (See e.g., *People v. Ruiz* (1998) 62 Cal.App.4th 234, 241.) "Section 1202 of the Evidence Code was drafted to ensure that the unavailability of a hearsay declarant would not prevent introduction of relevant evidence which would be admissible if the declarant was in court." (*People v. Marquez* (1979) 88 Cal.App.3d 993, 998.) Here, S. (i.e., the hearsay declarant) was not unavailable and actually testified at trial.

“ ‘Hearsay evidence’ is evidence of a statement that was made other than by a witness while testifying at the hearing and that is offered to prove the truth of the matter stated.” (Evid. Code, § 1200, subd. (a).) Unless an exception applies, “hearsay evidence is inadmissible.” (Evid. Code, § 1200, subd. (b).) “[I]n determining the credibility of a witness,” the jury may consider: “A statement made by [the witness] that is inconsistent with any part of his testimony at the hearing.” (Evid. Code, § 780, subd. (h).) Under Evidence Code section 1235, “[e]vidence of a statement made by a witness is not made inadmissible by the hearsay rule if the statement is inconsistent with his testimony at the hearing and is offered in compliance with Section 770.” Evidence Code section 770 precludes the introduction of “extrinsic evidence of a statement made by a witness that is inconsistent with any part of his testimony at the hearing,” unless the witness “while testifying” is given an opportunity to explain or deny the statement, or “[t]he witness has not been excused from giving further testimony in the action.”

At the time defendant was cross-examining her older son A. about alleged inconsistent statements made by her younger son S., S. had not yet testified. As a result, defendant was attempting to impeach S. with inconsistent statements he allegedly made prior to trial and out of court, even though S. had not yet testified. Therefore, defendant’s questions in this regard called for hearsay, and A.’s responses would not have been admissible as inconsistent statements by S., because S. had not yet made any statements on the record. Defendant has presented no other theory on the admissibility of A.’s responses to the challenged questions. Therefore, on the record before us, we cannot conclude the trial court erroneously sustained the prosecutor’s hearsay objections.

In addition, as the People point out, the impeaching testimony defendant was attempting to elicit from A. in response to the challenged questions is essentially cumulative or duplicative of other evidence in the record. First, A. essentially discredited S. during direct examination when he testified he recruited S. to follow his lead and to fabricate abuse allegations against their parents. Second, the court admitted testimony indicating S. made inconsistent statements about the abuse. Third, the court allowed testimony by A. and S. suggesting S. may have felt pressured by a foster parent not to recant the abuse allegations and/or may have been prevented by a foster parent from changing his story. Moreover, defendant had an opportunity to cross-examine S. about any inconsistent statements S. may have made to others and about the pressure he might have felt not to recant the allegations because of statements made to him by a foster parent. It is therefore improbable the jury would have reached a different verdict had the trial court allowed A. to respond to the challenged questions.

Defendant's remaining challenge is to the trial court's ruling on an objection made by the prosecutor during the cross-examination of an investigator who served A. with a subpoena prior to trial. The investigator testified for the prosecution that he saw A. with defendant and his grandmother walking together "arm-in-arm" inside the courthouse and approached them. When he approached them, he was alone and was wearing a badge and a gun. He asked if any of the three was A. Defendant was the only one who answered.

She said, “No.” When the prosecutor who knew the parties approached, it then became obvious A. was present and the subpoena was served.⁴

During cross-examination, the investigator testified it was possible defendant first indicated this was not A., but then stated another name, possibly Surge. To rebut the investigator’s testimony indicating she lied to him, defendant tried to establish A.’s nickname, Surge, would have been shown on the subpoena. The investigator explained, “We don’t generally deal with nicknames We usually go by legal names for court.” The investigator stated he was only familiar with A.’s legal name. During redirect, the prosecutor asked the investigator whether he had ever seen a subpoena identifying someone by a nickname, and he said, “no.” Next, during recross-examination, defendant asked the investigator whether he had been provided with any information other than A.’s name and general description. The investigator said he had access to some reports. Defendant asked whether any of the reports included A.’s nickname. The prosecutor objected “outside the scope of redirect,” and the court sustained the objection.

⁴ The record indicates the prosecutor’s main purpose in putting the investigator on the stand was to discredit A.’s recantation of the abuse allegations. The prosecutor wanted not only to show defendant had been in close contact with his mother and grandmother prior to trial but also to suggest A. was controlled by defendant and had been persuaded by defendant and his grandmother to change his story about the abuse allegations. During closing argument, the prosecutor argued, “[A.] didn’t speak. The person in control of [A.] spoke.” Defendant was being untruthful with a law enforcement officer, and A. “[d]idn’t say a darn thing,” because he knew he was “not allowed to. [¶] You better not say something. You better not open your mouth. He remained silent.”

Defendant contends the trial court was wrong. Because the prosecutor on redirect elicited testimony to bolster the investigator's assertion he did not know A. had a nickname, she argues she should have been allowed to try to show he had access to reports indicating A.'s nickname was indeed Surge. However, the investigator had already testified, "The only name I was familiar with was" A.'s legal name, and "I was unaware of the nickname." As a result, it is apparent defendant's purpose in pursuing this line of questioning was to attempt to prove A.'s nickname was Surge, so the jury would not be left with the impression she intentionally lied to a law enforcement officer. Indeed, while defendant was cross-examining the investigator, the trial court was concerned defendant was unfairly attempting to testify as to her version of the exchange with the investigator without being subject to cross-examination by the prosecutor. On at least three different occasions during cross-examination, the trial court instructed the jury to disregard self-serving testimonial statements defendant made on the record to attempt to convince the jury she did not lie to the investigator. As we read the record, this is why the trial court concluded defendant's line of questioning was "beyond the scope of redirect." Under these circumstances, we conclude the trial court acted within its discretion when it sustained the prosecutor's objection.

Having found no error, we also reject defendant's claim that the cumulative effect of the court's limitations on her ability to cross-examine the People's witnesses was prejudicial to her defense. This was not a close case. The testimony by S., as well as the testimony of those who were involved in the initial investigation and treatment of the boys, was compelling. The physical evidence against defendant was overwhelming.

Evidence discrediting A.'s recantation was strong. Under these circumstances, the jury would not have reached a different verdict based on the minor impeachment evidence defendant would have liked to present.

DISPOSITION

The judgment is affirmed.

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RAMIREZ

P. J.

We concur:

HOLLENHORST

J.

McKINSTER

J.